

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

DOCKET NO. 1997-239-C - ORDER NO. 2002-532

JULY 24, 2002

IN RE: Proceeding to Establish Guidelines for an) ORDER DENYING
Intrastate Universal Service Fund.) MOTIONS

This matter comes before the Public Service Commission of South Carolina (the Commission) on various Motions filed by the Consumer Advocate for the State of South Carolina (the Consumer Advocate), Sprint Communications Company and United Telephone of the Carolinas (Sprint/United).

On May 31, 2002, Bluffton Telephone Company, Farmers Telephone Cooperative, Inc., Hargray Telephone Company, Home Telephone Company, Horry Telephone Cooperative, Inc, and PBT Telecom, Inc. (collectively referred to as the Telephone Companies) filed requests with this Commission seeking approval of proposals to reduce rates for certain intraLATA calling plans, and to replace those revenues with additional Universal Service Fund (USF) funding. The requests would increase the size of the USF by approximately \$6.6 million, according to the Consumer Advocate's Motion. On July 1, 2002, the Consumer Advocate filed a Motion to Dismiss or Hold Filings in Abeyance.

The Consumer Advocate states that the companies' requests create a situation similar to that governed by Rule 205 SCACR, which states that an appellate court shall have exclusive jurisdiction over an appeal, except for matters not affected by the appeal.

The Consumer Advocate states that appeals of the Commission's Orders establishing the funding level and customer surcharges for the USF are currently before the circuit court and have not been resolved. The Consumer Advocate further asserts that since the matter of whether the USF should even be funded is a primary issue before the Court, the Commission lacks jurisdiction to conduct proceedings to increase the size of the USF. In summary, the Consumer Advocate believes that granting his Motion will allow the courts to resolve the legal questions concerning the USF prior to any further action to alter the size of the fund and additional surcharges to be levied on South Carolina consumers' bills. The Motion filed by Sprint/United on July 3, 2002 is substantially the same as the Motion filed by the Consumer Advocate with regard to requesting dismissal or holding filings in abeyance, however, Sprint/United also requested in the alternative that this Commission adjust the procedural schedule so that it could file comments. On July 11, 2002, a letter in support of the Consumer Advocate's Motion was filed on behalf of MCI metro Access Transmission Services, LLC, MCI WorldCom Network Services, Inc, and MCI WorldCom Communications, Inc.

On July 12, 2002, a Return to Motions was filed on behalf of the Telephone Companies. The Return asserts that neither the Commission nor the circuit court has stayed the effectiveness of the Commission's USF implementation Order. In addition, the circuit court has already specifically denied the Consumer Advocate's request to stay that Order. The Telephone Companies further assert that the South Carolina Administrative Procedures Act expressly provides that the Commission's decision is not stayed pending judicial review. Accordingly, the Telephone Companies request that this Commission

deny the Motions to Dismiss or Hold the Filings and Proceedings in Abeyance. On July 15, 2002, the Consumer Advocate filed a letter replying to the Telephone Companies' Return.

We have considered this matter and do hereby deny both the Consumer Advocate and Sprint/United Motions. We agree with the Telephone Companies that this Commission's decisions are not stayed during judicial review. See S.C. Code Ann. Section 1-23-380(A)(2). We also note that the Circuit Court has previously refused to stay this matter, pending full judicial review. See Form Circuit Court Order of Judge Ernest B. Kinard, Jr., dated November 6, 2001. We also decline to issue a Stay, or to hold filing in abeyance. We also deny the Sprint/United alternate request that the Commission adjust the procedural schedule so that Sprint/United may file comments. Sprint/United is already a party to this proceeding, and will have ample opportunity to file comments through the prefiling of testimony process. The delay in the established schedule requested by Sprint/United (and, for that matter, the delay requested by the Consumer Advocate) would result in a delay in the December 1, 2002 modification date already established by this Commission in Order No. 2002-481. This date already delayed our originally scheduled October 1, 2002 modification date set by Order 2001-419. As stated by the Telephone Companies, proceeding with implementation of the State USF is in the public interest and is consistent with the Telecommunications Act of 1996. It is the belief of this Commission that further delay in implementation of the plan would not serve the public interest, and, further, is unnecessary and inconsistent with State law and the goal of removing implicit support as mandated by both State and Federal laws.

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Accordingly, the Motions of the Consumer Advocate and Sprint/United are denied. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:



Chairman

ATTEST:



Executive Director

(SEAL)